



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (FL-2008-03)
STATEMENT OF ARREARAGES
REQUIRE NOTIFICATION OF DECLARATION OF ARREARAGES

TO: Larry Doyle, Chief Legislative Counsel,
State Bar Office of Governmental Affairs

FROM: Dianne Fetzer, Carla Harms

DATE: August 10, 2007

RE: Family law: Statement of Arrearages: Require Notice of Declaration
An act to amend §17524 of the Family Code

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: June 15, 2007
Approval vote: Unanimous (12-0-0)

<u>Contact</u>	<u>Section Affirmative Legislation Chair</u>
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SUMMARY OF PROPOSAL:

ISSUES AND PURPOSE:

1. What do you see as the key issue(s) raised by this proposal?

SHOULD A SUPPORT OBLIGOR BE ENTITLED TO NOTICE OF, AND AN OPPORTUNITY TO EXAMINE, THE DECLARATION OF THE SUPPORT OBLIGEE ALLEGING HOW MUCH CHILD AND SPOUSAL SUPPORT ARREARAGE THE SUPPORT OBLIGEE ALLEGES THE SUPPORT OBLIGOR OWES?

2. **What is the deficiency in existing law that this proposal seeks to remedy?**

Disclosure of Declaration

Under Family Code §17524, the person to whom support is owed is mandated to complete and provide to DCSS a declaration of support arrearages in which that party declares, under penalty of perjury, in a month by month breakdown from the date of the first order to the date of the declaration, how much support has been paid by the obligor. DCSS then creates an audit using this sworn declaration wherein it credits the support obligor for only those payments alleged by the party to whom support is owed. Under current DCSS practices, that declaration is not filed with the court or provided to the support debtor. Thus, government collection efforts commence without the support debtor having been provided due process considerations before actions such as wage garnishment, registration, license suspension etc. occur. Some legal actions taken by DCSS have specific response time limitations and, after the statutory passage of time allowed for response to that specific legal action, the debtor loses his right to challenge the arrearage, even if it is erroneous. The filing and service of these declarations would allow the debtor the opportunity to challenge the amount allegedly owed early in enforcement proceedings. This practice would also allow DCSS to enforce accurate arrearage totals and prevent some future set-asides which sometimes, in practice, are granted for lack of notice.

This amendment would require that Department of Child Support Services file the declaration with the court and serve it on the alleged obligor prior to commencing any enforcement action wherein it attempts to collect alleged support arrearages, thus allowing the court and the obligor to examine the declaration and determine its accuracy.

2. **How does this proposal remedy the problem? Provide at least one specific example of how the bill would do so.**

Disclosure of Declaration

This amendment would require that Department of Child Support Services file the declaration with the court and serve it on the alleged obligor prior to commencing any enforcement action wherein it attempts to collect alleged support arrearage, thus allowing the court and the obligor to examine the declaration and determine its accuracy.

HISTORY: §17524 was added by SB 196 (Kuehl) of 1999 (Chapter 478). No legislation similar to this proposal has been introduced either this session or during a previous legislative session.

IMPACT ON PENDING LITIGATION: None.

TEXT OF PROPOSAL

SECTION 1. Section 17524 of the Family Code is amended to read:

17524. (a) Upon making application to the local child support agency for child support enforcement services pursuant to Section 17400, every applicant shall be requested to give the local child support agency a statement of arrearages stating whether any support arrearages are owed. If the applicant alleges arrearages are owed, the statement shall be signed under penalty of perjury, *filed with the Court and served on the obligor*.

(b) For all cases opened by the district attorney or local child support agency after December 31, 1995, the local child support agency shall enforce only arrearages declared under penalty of perjury pursuant to subdivision (a), arrearages accrued after the case was opened, or arrearages determined by the court in the child support action. Arrearages may be determined by judgment, noticed motion, renewal of judgment, or registration of the support order.

(c) For all cases opened by the district attorney on or before December 31, 1995, the local child support agency shall enforce only arrearages that have been based upon a statement of arrearages signed under penalty of perjury or where the local child support agency has some other reasonable basis for believing the amount of claimed arrearages to be correct.